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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **OBESITY RESEARCH INSTITUTE,**  
13 **LLC,**

14 **Plaintiff,**

15 **v.**

16 **FIBER RESEARCH**  
17 **INTERNATIONAL, LLC, *et al.*,**

18 **Defendants.**

19  
20 **AND RELATED COUNTERCLAIM.**  
21  
22

Case No. 15-cv-00595-BAS-MDD

**ORDER:**

**(1) GRANTING MOTIONS TO  
FILE DOCUMENTS UNDER  
SEAL (ECF Nos. 426, 428);**

**AND**

**(2) GRANTING IN PART AND  
DENYING IN PART MOTION  
TO FILE DOCUMENTS UNDER  
SEAL (ECF No. 430)**

23 Presently before the Court are three motions by the parties to file documents  
24 under seal. (*See* ECF Nos. 426, 428, 430.) The motions were filed following this  
25 Court's previous Order on the parties' motions to seal. (ECF No. 420.) Plaintiff  
26 Obesity Research Institute, LLC's ("ORI") filed a renewed request for leave to file  
27 three documents under seal. (ECF No. 426.) Defendant Fiber Research International,  
28

1 LLC’s (“FRI”) filed two renewed requests for leave to file various documents under  
2 seal. (ECF Nos. 428, 430.)

3 Consistent with its previous orders, the Court will refer to each motion by its  
4 Electronic Case Filing number (“ECF No.”) on the docket for the purposes of this  
5 order.

## 6 7 **I. LEGAL STANDARD**

8 “[T]he courts of this country recognize a general right to inspect and copy  
9 public records and documents, including judicial records and documents.” *Nixon v.*  
10 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record  
11 is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the  
12 starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.  
13 2006) (citing *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.  
14 2003)). “The presumption of access is ‘based on the need for federal courts, although  
15 independent—indeed, particularly because they are independent—to have a measure  
16 of accountability and for the public to have confidence in the administration of  
17 justice.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.  
18 2016) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

19 A party seeking to seal a judicial record bears the burden of overcoming the  
20 strong presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet  
21 this burden depends upon whether the documents to be sealed relate to a motion that  
22 is “more than tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809  
23 F.3d at 1102. When the underlying motion is more than tangentially related to the  
24 merits, the “compelling reasons” standard applies. *Id.* at 1096–98. When the  
25 underlying motion does not surpass the tangential relevance threshold, the “good  
26 cause” standard applies. *Id.*

27 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest  
28 in disclosure and justify sealing court records exists when such ‘court files might

1 have become a vehicle for improper purposes,’ such as the use of records to gratify  
2 private spite, promote public scandal, circulate libelous statements, or release trade  
3 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). However,  
4 “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,  
5 incrimination, or exposure to further litigation will not, without more, compel the  
6 court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). The decision to seal  
7 documents is “one best left to the sound discretion of the trial court” upon  
8 consideration of “the relevant facts and circumstances of the particular case.” *Nixon*,  
9 435 U.S. at 599.

10 Federal Rule of Civil Procedure 26(c), generally, provides the “good cause”  
11 standard for the purposes of sealing documents. *See Kamakana*, 447 F.3d at 1179.  
12 The test applied is whether “‘good cause’ exists to protect th[e] information from  
13 being disclosed to the public by balancing the needs for discovery against the need  
14 for confidentiality.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)  
15 (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213  
16 (9th Cir. 2002)). Under Rule 26(c), only “a particularized showing of ‘good cause’ .  
17 . . is sufficient to preserve the secrecy of sealed discovery documents[.]” *In re*  
18 *Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th  
19 Cir. 2012) (emphasis added); *see also Kamakana*, 447 F.3d at 1180 (requiring a  
20 “particularized showing” of good cause). “Broad allegations of harm, unsubstantiated  
21 by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.”  
22 *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Moreover,  
23 a blanket protective order is not itself sufficient to show “good cause,” let alone  
24 compelling reasons, for sealing particular documents. *See Foltz*, 331 F.3d at 1133;  
25 *Beckman Indus.*, 966 F.2d at 476; *San Jose Mercury News, Inc. v. U.S. District Court,*  
26 *N. Dist.*, 187 F.3d 1096, 1103 (9th Cir. 1999).

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## II. ANALYSIS

### A. ECF No. 426

In ECF No. 426, ORI seeks leave to file under seal Exhibit 86, Exhibit 90, and an unredacted version of Exhibit 130 to the Declaration of Henny den Uijl, filed in along with its consolidated motion for summary judgment and opposition to FRI's motion for partial summary judgment. FRI did not file a response to ECF No. 426.

Exhibits 86 and 90 contain propriety business or product information. Exhibit 86 is an email chain between ORI and its suppliers, and ORI argues that it contains proprietary information regarding its product sourcing and pricing. (ECF No. 426 at 4-5.) ORI argues that, if this information became public, it would cause "severe business harm and competitive disadvantage." (*Id.* at 4.) Exhibit 90 is a "formulation and product specification" information sheet that ORI argues contains Lipozene's proprietary composition and product specifications. (*Id.* at 5.) ORI argues that a competitor could use this information to "reverse engineer" Lipozene, causing a "significant business disadvantage" to ORI. (*Id.*) ORI's explanations appear to be consistent with the Court's assessment of these exhibits.

ORI proposes to seal proprietary information, such as "formulations, sourcing information, supply quantities, and marketing strategies," and financial information in Exhibit 130, which is the Expert Report of Neil Beaton and has been partially redacted. (ECF No. 426 at 3-4.) ORI argues that failing to seal the proprietary product information will cause ORI "irreparable harm." (*Id.* at 3.) ORI additionally argues that it is a privately held business, making the redacted financial information ("highly sensitive figures") "extremely closely guarded." (*Id.* at 4.) ORI further states that the disclosure of this specific financial information is "not crucial" to public interest because the unredacted, publically available portions of Exhibit 130 provide the relevant foundation in this case. (*Id.*) ORI's current request is more narrowly tailored than its previous request to seal the entire report, and the Court's assessment of the redactions is consistent with ORI's explanations.

1 Having reviewed ORI's requests, the Court finds that ORI provides  
2 compelling reasons to seal the aforementioned documents. *See Kamakana*, 447 F.3d  
3 at 1179. Therefore, the Court **GRANTS** ORI's motion to file documents under seal.  
4 (ECF No. 426.)

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6 **B. ECF No. 428**

7 In ECF No. 428, FRI refiled its request to file under seal an unredacted copy  
8 of ORI's memorandum of points and authorities in support of its motion to exclude  
9 Dr. Fahey and Exhibit D to ECF No. 428, which is the unredacted deposition  
10 transcript of Medallion Labs representative Timothy Peters and Exhibit 10 to the  
11 Declaration of Sean D. Flaherty in support of ORI's aforementioned memorandum.  
12 Originally, on March 17, 2017, the Court considered these documents, denied FRI's  
13 request, and granted FRI leave to refile its request. (ECF No. 324.) The Court denied  
14 these requests two more times (ECF Nos. 417, 420), ordering FRI to correct certain  
15 deficiencies before it would consider its requests. The Court will now review its  
16 amended requests. ORI did not file a response to ECF No. 428.

17 FRI requests to seal portions of Mr. Peters's deposition transcript (Exhibit D)  
18 that contain testing methodologies and parameters. (ECF No. 428 at 4-5.) FRI argues  
19 that this testing information is propriety and disclosure could cause irreparable harm.  
20 (*Id.*) The redactions applied to the deposition transcript are narrowly tailored, and  
21 FRI's explanations appear to be consistent with the Court's assessment of this  
22 exhibit.

23 FRI argues that the unredacted version of ORI's aforementioned memorandum  
24 should be sealed for the same reasons as above, as well as those reasons stated in the  
25 Court's earlier Order (ECF No. 420), because it incorporates the same proprietary  
26 information contained in the related documents. (ECF No. 428 at 6-7.) FRI appears  
27 to have applied redactions in the memorandum consistent with the Court's  
28 assessment of the relevant exhibits as stated in its orders.

1 Having reviewed FRI's requests, the Court finds that FRI provides compelling  
2 reasons to seal the aforementioned documents. *See Kamakana*, 447 F.3d at 1179.  
3 Therefore, the Court **GRANTS** FRI's motion to file documents under seal. (ECF No.  
4 428.)

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6 **C. ECF No. 430**

7 In ECF No. 430, FRI seeks leave to file under seal Exhibits 109, 112, 114-115,  
8 and 149 to ORI's consolidated cross-motion for summary judgment and opposition  
9 to FRI's motion for partial summary judgment. ORI did not file a response to ECF  
10 No. 430.

11 FRI narrowly tailors its request to seal information in Exhibits 114, 115, and  
12 149. FRI only seeks to redact and seal information identifying current or prospective  
13 customers of FRI or relating to Propol A pricing information. (ECF No. 430 at 7.)  
14 FRI argues that competitors could use this information improperly, damaging FRI's  
15 business and sales efforts, by either diverting clients, adjusting pricing, or tailoring  
16 marketing strategies. (*Id.*) FRI's explanations appear to be consistent with the Court's  
17 assessment of these exhibits.

18 Exhibit 109 is a supplemental interrogatory response that lists the names of  
19 FRI's owners and "sub-owners." (ECF No. 430 at 4.) FRI tailored its renewed request  
20 by requesting to seal only the specific names of the "sub-owners"—thirteen of fifteen  
21 individuals' or entities' names listed. (*See* ECF No. 430-2.)

22 First, FRI misinterprets the Court's previous Order regarding a lack of case  
23 law to support its reasoning. (ECF No. 420 at 9 ("FRI argues that Nevada State law,  
24 which does not require public disclosure of a corporation's ownership, justifies  
25 sealing this document. FRI provides no case law to support its reasoning."); ECF No.  
26 430 at 6 ("The Court should thus seal the identities of the holding companies . . .  
27 because . . . [FRI] has an interest in maintaining that information as confidential, as  
28 permitted under Nevada law . . . .")) FRI cites to a string of cases stating that

1 propriety business or commercially sensitive information is appropriate for sealing,  
2 but this does not cure the deficiency the Court noted. (ECF No. 430 at 6.) What FRI  
3 fails to do is to provide legal support explaining why Nevada corporate law allowing  
4 companies to keep their ownership structure confidential supports sealing that  
5 information in federal court. In other words, FRI has not shown that “removing  
6 protections” afforded by state law amounts to a “compelling reason” to seal. (See  
7 ECF No. 430 at 4-6.) Moreover, FRI has not shown that a corporate ownership  
8 structure is the type of propriety business or commercially sensitive information that  
9 merits sealing. See *Kite Shipping LLC v. San Juan Nav. Corp.*, No. 11CV02694  
10 BTM WVG, 2012 WL 6591579, at \*2 (S.D. Cal. Dec. 17, 2012) (declining to seal  
11 information relating to corporate structure); *In re Hydroxycut Mktg. & Sales*  
12 *Practices Litig.*, No. 09MD2087 BTM AJB, 2011 WL 1135114, at \*2 (S.D. Cal. Mar.  
13 29, 2011) (same).

14 Second, FRI has failed again to provide any other compelling reason for why  
15 this limited information in Exhibit 109 should be sealed. (See ECF No. 420 at 9  
16 (finding that FRI failed to provide “any other reasons, injuries, or risks to support  
17 sealing this document.”).) Instead, FRI continues to assert conclusory statements that  
18 it “has an interest” in keeping this information confidential, and focuses on the  
19 irrelevancy of the redacted names. (ECF No. 430 at 5-6.) While a court may consider  
20 the relevancy of the information sought to be sealed, a party still must articulate some  
21 reasoning for why the information should be kept confidential. See *Ctr. for Auto*  
22 *Safety*, 809 F.3d at 1096-97 (“Under this stringent ‘compelling reasons’ standard, a  
23 court may seal records only when it finds ‘a compelling reason and articulate[s] the  
24 factual basis for its ruling, without relying on hypothesis or conjecture.’” (quoting  
25 *Kamakana*, 447 F.3d at 1179)); see also *Apple Inc.*, 727 F.3d at 1225-26 (analyzing  
26 both parties’ arguments that making their “detailed product-specific information”  
27 public would cause competitive harm before considering public interest and  
28 relevancy). Thus, the Court finds FRI’s reasoning inadequate.

1 FRI applies many of the same arguments as above to Exhibit 112. (ECF No.  
2 430 at 4-6.) Exhibit 112 is FRI's operating agreement. FRI tailored its renewed  
3 request by requesting to seal only the specific names of entities mentioned throughout  
4 the agreement. (*See, e.g.*, ECF No. 430-3 at 3.) FRI previously argued that this  
5 agreement "contain[ed] confidential business information, 'including, but not limited  
6 to, detailed financial information about Defendants' business, such as the allocation  
7 of net income and net losses.'" (ECF No. 430 at 4 (quoting its previous motion to  
8 seal, ECF No. 364).) As discussed above, FRI fails again to provide any compelling  
9 reason for why this limited information should be sealed. *See Berkeley Research*  
10 *Grp., LLC v. United Potato Growers of Am., Inc.*, No. CV C 16-07205 WHA, 2017  
11 WL 1650582, at \*5 (N.D. Cal. May 2, 2017) (finding that an operating agreement  
12 should not be sealed); *Ne. Series of Lockton Companies, LLC v. Bachrach*, No. 12  
13 CV 1695, 2013 WL 3989295, at \*2 (N.D. Ill. Aug. 2, 2013) (same). Instead, FRI  
14 continues to assert conclusory statements that it "has an interest" in keeping this  
15 information confidential, and focuses on the irrelevancy of the redacted names. (ECF  
16 No. 430 at 5-6.) For the reasons stated above, the Court finds FRI's reasoning  
17 inadequate.

18 Having reviewed FRI's requests, the Court finds FRI failed to carry its burden  
19 to demonstrate that sealing Exhibits 109 and 112 is appropriate under the compelling  
20 reasons standard. *See Kamakana*, 447 F.3d at 1179. Otherwise, having reviewed  
21 FRI's requests, the Court finds that FRI provides compelling reasons to seal Exhibits  
22 114, 115, and 149. *See Kamakana*, 447 F.3d at 1179. Therefore, the Court **GRANTS**  
23 **IN PART AND DENIES IN PART** FRI's motion to file documents under seal.  
24 (ECF No. 430.)

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1 **III. CONCLUSION & ORDER**


2 In light of the foregoing, the Court:

- 3 (1) **GRANTS** ORI's request to file documents under seal in ECF No. 426.  
4 The Clerk of the Court is directed to file the following exhibits under  
5 seal: ECF Nos. 341-26, 341-28, and 347-21.
- 6 (2) **GRANTS** FRI's request to file documents under seal in ECF No. 428.  
7 The Clerk of the Court is directed to file the following exhibits under  
8 seal: ECF Nos. 429 and 429-1.
- 9 (3) **GRANTS IN PART** and **DENIES IN PART** FRI's request to file  
10 documents under seal in ECF No. 430. The Clerk of the Court is directed  
11 to file the following exhibits under seal: ECF Nos. 431-2, 431-3, and  
12 431-4.

13 If FRI wishes to re-file any denied request, addressing the defects identified in  
14 this order, it may do so no later than **December 22, 2017** after the issuance of this  
15 Order. Otherwise, FRI is instructed to file the unredacted versions of the  
16 aforementioned documents as directed by the Court in this Order on the public docket  
17 no later than **December 22, 2017** after the issuance of this Order. When filing the  
18 documents on the public docket, FRI must strictly adhere to the relevant Federal  
19 Rules of Civil Procedure, this district's Civil Local Rules, this Court's Standing  
20 Order for Civil Cases, and this district's Electronic Case Filing Administrative  
21 Policies & Procedures Manual. Non-compliance with this order or any relevant rules  
22 may result in sanctions pursuant to Civil Local Rule 83.1.

23 **IT IS SO ORDERED.**

24  
25 **DATED: December 8, 2017**

26   
27 **Hon. Cynthia Bashant**  
28 **United States District Judge**